

REMARKS

This Response is submitted in reply to the Office Action mailed on August 22, 2007. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-504 on the account statement.

Claims 1-14 are pending. Claims 1-8, 11-12 and 13 are rejected. Claims 9, 10, 12 and 14 are objected to. In response, Claims 1; 9, 10, 12 and 14 have been amended. Claim 2 is canceled. The amendments do not add new matter. In view of the amendments and for the reasons set forth below, Applicants respectfully request that the rejections be withdrawn.

In the Office Action, Claim 12 is objected to because of the following informalities: A dependent claim cannot depend on itself. In response, Applicants amend Claim 12 to depend on Claim 11.

In the Office Action, Claims 9, 10 and 14 are objected to under 37 C.F.R. § 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. The Office Action notes that Claim 8 is already multiply dependent. In response, Applicants amend Claims 9, 10 and 14 to depend on any of Claim 1 to 7, none of which are multiply dependent.

Accordingly, Applicants respectfully request that the objections to Claims 9, 10, 12 and 14 be withdrawn.

In the Office, Action, Claims 1, 3, 8 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO 99/48372 to Van Lengerich ("*Van Lengerich*"). Amended independent Claim 1 recites a pellet comprising a compacted inner matrix and at least one coating, wherein the inner matrix comprises viable micro-organisms, wherein the inner matrix, before or shortly after the coating, is characterised by a water activity of below 0.3, and the coating comprises a moisture barrier, characterised in that the pellet has a volume of at least 0.02cm³. The amendment is supported in the specification at page 17, lines 4-15 and original Claim 2. Applicants respectfully submit that *Van Lengerich* fails to disclose or suggest every element of the present claims.

For example, *Van Lengerich* fails to disclose or suggest an inner matrix, before or shortly after a coating, which is characterised by a water activity of below 0.3 as required, in part, by

Claim 1 as amended. In fact, the added limitation to Claim 1 was from Claim 2, which the Office Action does not even reject in view of *Van Lengerich*. Further, *Van Lengerich* does not disclose any water activity information regarding its product. Moreover, since *Van Lengerich* requires a free-flowing mixture where its starch component is not gelatinized, any water existing in the product is more likely to be free than bound, which would cause a higher water activity than that of the present claims. See, *Van Lengerich*, page 5, line 20 to page 6, line 6.

Therefore, Applicants respectfully submit that *Van Lengerich* fails to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the anticipation rejection in view of *Van Lengerich* be withdrawn.

In the Office Action, Claims 1, 2 and 4-7 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,888,171 to Okonogi et al. ("*Okonogi*"). Claims 1-8 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over *Okonogi*. Applicants respectfully submit that the cited references fail to disclose or suggest every element of the present claims.

For example, *Okonogi* fails to disclose or suggest a pellet comprising a compacted inner matrix and at least one coating, wherein the inner matrix comprises viable micro-organisms as required, in part, by the independent Claim 1. By contrast, *Okonogi* teaches a core with viable microorganisms adhered to the surface of the core, using an adherent material, to form a stratified structure. See, *Okonogi*, column 4, lines 9-33. Regardless of whether the core material is compacted to form a pellet, it is clear that the microorganisms contained in *Okonogi* are not part of a compacted inner matrix as required by the claims. Rather, the microorganisms are adhered to the surface of the inner matrix.

Okonogi even teaches away from a compacted inner matrix including microorganisms by stating that mixing viable microbacteria with dried starch to prepare pelletized confections fails to keep a product from absorbing environmental moisture and atmospheric oxygen and that the product must be contained in a hermetically sealed container containing nitrogen instead of air. See, *Okonogi*, column 2, lines 12-27. Applicants, by contrast to *Okonogi*, have found that by compacting dried microorganisms together with a matrix, and by coating the pellets with a moisture barrier, an excellent stability over storage time is obtained. See, specification, page 3, lines 14-17.

Therefore, Applicants respectfully submit that *Okonogi* fails to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the anticipation and obviousness rejections in view of *Okonogi* alone be withdrawn.

In the Office Action, Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Okonogi* in view of EP 0298605 to Klapwijk et al. ("*Klapwijk*"). Independent Claim 11 recites a process for obtaining pellets to supplement a food product with viable micro-organisms, which comprises the steps of mixing a preparation of micro-organisms and further components, drying the mixture to an Aw below 0.3, compacting the mixture under pressure to obtain pellets comprising a volume of at least 0.02cm³, and coating the pellets with a moisture barrier. Applicants respectfully submit that, even if combinable, the cited references, alone or in combination, fail to disclose every element of the present claims.

For example, *Okonogi* fails to disclose or suggest mixing a preparation of micro-organisms and further components, drying the mixture to an Aw below 0.3, and compacting the mixture under pressure to obtain pellets comprising a volume of at least 0.02cm³. Rather, as stated previously, *Okonogi* teaches a core with viable microorganisms separately adhered to the surface of the core, using an adherent material, to form a stratified structure. See, *Okonogi*, column 4, lines 9-33. Regardless of whether the core material is compacted to form a pellet, it is clear that the microorganisms contained in *Okonogi* are not part of a compacted mixture as required by the claims. Rather, the microorganisms are separately adhered to the surface of the mixture. Moreover, as stated above, *Okonogi* even teaches away from a compacted mixture including microorganisms by stating that mixing viable microbacteria with dried starch (further components) to prepare pelletized confections fails to keep a product from absorbing environmental moisture and atmospheric oxygen.

Klapwijk fails to remedy the deficiencies of *Okonogi* because *Klapwijk*, rather than being directed to a pellet process as required by the present claims, is directed to the preparation of bacterial compositions used in bread making. See, *Klapwijk*, page 1, lines 1-3. The examples disclosed in *Klapwijk* clearly teach only processes for preparing cell concentrate mixtures or processes for incorporating these mixtures into bread dough. See, *Klapwijk*, Examples 1-7. As a result, *Klapwijk* fails to disclose any compacting step or any suggestion that the cell mixtures disclosed are capable of being pelletized as required by the present claims.

Therefore, Applicants respectfully submit that the combination of cited art fails to disclose or suggest every element of the present claims. Accordingly, Applicants respectfully request that the obviousness rejection in view of *Okonogi* and *Klapwijk* be withdrawn.

For the foregoing reasons, Applications respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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